

# What Can I Do When I Owe Taxes or Other Debts to the State of Iowa?

By Leah Johnson\*

If you cannot register your car, this is a sign that you may owe money to the state of Iowa. If you owe the state of Iowa for certain debts, your license may also be suspended.

There are many kinds of debts that you can owe the state. These include:

- Unpaid taxes
- Unpaid court costs or fines from civil or criminal cases
- Overpayments of state benefits like unemployment, FIP, etc.

If you owe money to the state, the Department of Revenue will send you a notice. Do not ignore this notice. It is important for you to know how much you owe and why.

The state can do things that normal creditors cannot. The most common of these is suspension of licenses or car registration. This includes drivers' licenses as well as hunting, fishing, and professional licenses. There is a way to solve this problem: ask for a payment plan.

## Steps to take when making a payment plan:

- Get all your financial information together, like pay stubs, tax returns, and documentation of your bills.
  - ▷ Look at your monthly income.
  - ▷ The Department of Revenue will often accept a monthly payment that is 5% - 10% of your monthly net income.
- If you have tax debt, you will need to set up a payment plan through the Iowa Department of Revenue. You can call the Department of Revenue to set up the payment plan or visit their website to pay: [www.PayDebt.Iowa.gov](http://www.PayDebt.Iowa.gov).
- If you owe court debt, who you set up a payment plan with will depend on the situation. It may be the clerk of court, the county attorney, the department of revenue, or a private debt collection agency. The rules about who collects these debts are complicated. If you owe court debt for more than one case, more than one of these agencies may be in charge of collecting the different debts.
- Sometimes people have problems getting a payment plan that they can afford. If you have this problem, you should call Iowa Legal Aid to find out if free legal help is available.

## How can I get them to let me renew my car registration?

- Temporary solution:
  - ▷ Usually, if you work out a payment plan or are actively addressing the debt, the state will temporarily lift the suspension of your car registration for 15 days. It is important that you register as soon as possible after the hold is lifted.
- Permanent solution:
  - ▷ If you either pay off the debt or keep up with a payment plan for a year, then the suspension of your registration should be lifted permanently.

## Can they take my state tax refund to pay off the debt?

Yes. Even if you have a payment plan, the state of Iowa can still take a part of your tax refund to pay on a state debt.

*The State can do things normal creditors cannot. This includes suspending drivers' licenses as well as hunting, fishing and professional licenses.*

## Can the state garnish my wages to pay off the debt?

Yes, but within certain limits. The state can garnish a certain amount of your wages or a bank account to pay off the debt. For taxes, the state can theoretically garnish 100% of your wages. However, they will often accept a reasonable payment plan instead of such an extreme measure.

For court debt, the state can garnish the following amounts:

Weekly Disposable Wages	Weekly Maximum Garnishment
Less than \$217.50	\$0
\$217.50 to \$290.00	Your disposable wages minus \$217.50
More than \$290.00	25% of your disposable wages

*"Disposable wages" is your pay after any withholdings required by law.*

## Can the State Take My Benefit Payments or Childcare Payments?

The state cannot garnish any federal benefits such as Social Security or VA benefits under any circumstances. The state also cannot generally garnish state benefits such as FIP or unemployment. Finally, the state has agreed not to offset DHS payments for childcare at this time.

# Have You Applied for a Waiver of School Fees?

By Jan Rutledge\*

School fees can really add up. If you have more than one child in school, the fees can come to hundreds of dollars. Many parents have a hard time buying all the things their kids need. Fortunately, low-income families can ask that the school waive the fees.

## SOME FEES ARE NOT COLLECTIBLE.

The school should not be able to collect a fee if the fee is not authorized by Iowa law. This article will not deal with what fees are authorized.



Helping low-income Iowans with income maintenance problems is a priority of Iowa Legal Aid. If your wages or a bank account are garnished by the state of Iowa, or you need help with a state debt collection problem, contact Iowa Legal Aid. You may be able to get free legal help. Call Iowa Legal Aid at 1-800-532-1275.

*\*Leah Johnson is a staff attorney with Iowa Legal Aid's Intake Unit.*

## You May Be Able To Settle Your Court Debt

In 2010, the State of Iowa enacted a program to help individuals settle some court debt. Eligible people would settle the debt by paying the state 50% of what they owe. You may be eligible to do this if:

- You are under 200% of federal poverty guidelines;
- You are not in prison or jail;
- The court debt is more than four years old; and
- The court debt is not jail fees, restitution or civil penalties for certain motor vehicle offenses.

Please be advised that, while this program was established by law in 2010, the State has not yet developed forms for people to apply for it. If you think you may be eligible for this program, free legal help may be available. Call Iowa Legal Aid at 1-800-532-1275 to apply for assistance.



## Low-income parents may be able to get fees waived.

The school should not be able to collect a fee if the fee has been waived. Fee waiver is the topic of this article.

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## Have You Applied for a Waiver of School Fees? Continued from Page 1

### Who can get fee waivers?

By law (Part 281, Chapter 18 of the Iowa Administrative Code) the school must waive fees if the family is financially eligible for one of the following programs. The programs are:

- free lunch
- FIP, or
- transportation assistance under the open enrollment law.

In addition, if the student is in foster care, the fees should be waived.

If the family qualifies financially for reduced price (rather than free) lunch, the family may still ask for a waiver of fees. The school's policy must either allow a full waiver of fees, or a partial waiver. The law doesn't say exactly how much the fees would be reduced if the school has opted for partial waiver of fees. The law just says that a partial waiver shall be based on a sliding scale related to an ability to pay.

In any case, fees waived are gone for good. They can't be collected later. The parents can't be sued for them.

### When can families apply?

The application can be made at any time. Parents can also ask for a temporary waiver, if the family has a temporary financial problem.

If the primary language of the student or the family is not English, the school must provide a copy of the application materials in the student's native language, or arrange for a translation of the materials within a reasonable time.

### What kinds of expenses are covered under the fee waiver?

The items covered under this law are "course offerings" and "related activities," as well as transportation. Certainly, the waiver would cover a fee for a class, and things connected to a class, such as a field trip. It may also cover things like being in the band, or playing on an athletic team. If the school offers course credit for driver education, the expenses for driver education would seem to come under the fee waiver rule as well. The fee waiver rule probably would NOT cover things like prom tickets or class rings.

### PARENTS WHO ARE DENIED WAIVER OF FEES CAN APPEAL

If the school does not waive fees, the family can appeal to someone the school board has designated. If the answer is still no, the family may appeal the denial of the school district to the Director of the Department of Education. The appeal to the Department of Education is done by filing a notarized (sworn) statement within 30 days of the day the denial is received. The Department of Education will decide if what the school did was right.

### EVEN IF FEES ARE NOT WAIVED OR PAID, THE STUDENT CANNOT BE PUNISHED.

Even if a family is not eligible for a fee waiver, the school is limited in what it can do to collect fees. It would be a violation of the law for a school to take action against a student because of unpaid fees. Parents, not students, are responsible for school fees. (If the student is 18 years old, it may be possible for the student to be responsible for payment of fees.) About all the school can lawfully do is sue the parents in small claims court for the fees. The school cannot refuse to give report cards, or keep the student from going through graduation ceremonies. The school cannot refuse to let the student register for classes. The school should not read the names of students whose fees are not paid, or post a list of names, or take other action to embarrass the student.

For more information about school fees or other education problems, contact Iowa Legal Aid at 1-800-532-1275 or visit the Iowa Legal Aid Website at [www.iowalegalaid.org](http://www.iowalegalaid.org).

*\*Jan Rutledge is Managing Attorney of the Iowa City Regional Office of Iowa Legal Aid*

# Change to Custody Law Regarding Sex Offenders

A new law tells judges in custody cases to consider if a parent let a child be around a sex offender. The change in Iowa custody law took effect July 1, 2012. It adds to the long list of factors a judge can consider to decide what custody arrangement is in the best interest of a child. The new law allows the judge to consider if a parent let someone have custody, control or unsupervised access to a child while knowing the person is required to register as a sex offender or is registered as a sex offender.

Iowa law always let judges consider evidence about care of the children when deciding the best custody arrangement. The new law tells the judge to pay special attention to whether a parent has allowed the children to be around a sex offender. This does not mean a parent who lets a sex offender be around the children automatically loses custody. It does mean the judge can place special importance on this factor when deciding which parent should have custody of the children.

If you have children, make sure people taking care of your children are not on the sex offender registry and are not required to register as a sex offender. Talk to anyone who will be providing care for your children and ask about any criminal history. You can also check online to see if someone is on the registry. Go to the National Sex Offender Public Website at [www.nsopw.gov](http://www.nsopw.gov).

## VINELink

Stay informed of a criminal offender's status through VINELink. VINELink is the online version of VINE (Victim Information and Notification Everyday), the National Victim Notification Network. This service allows crime victims to obtain timely and reliable information about criminal cases and the custody status of offenders 24 hours a day. Victims and other concerned citizens can also register to be notified by phone, email, text message (SMS), or TTY device when an offender's custody status changes. Users can also register through their participating state or county toll-free number.

You can find out more about VINELink by going to [www.vinelink.com](http://www.vinelink.com). Click on the state where you wish to search for the offender. Some states have the ability to display this website in Spanish, as well. If this option is available, you will see an "English | Español" toggle in the upper right hand corner.

*The above information is from the VINELink website.*

## PUBLIC NOTICE

**Meetings of the Iowa Legal Aid Board of Directors are open to the public. We encourage the public to attend.**

**The next meeting of the Board of Directors is scheduled to take place on November 17, 2012. The Board of Directors meets at least four times each year. For details on the next meeting of the Board, call toll-free: 1-800-532-1275.**

## Accidents with No Car Insurance Continued from Outside Front Cover

- Are not at fault or there is no reasonable possibility of a judgment because:
  - ▷ the other driver admits causing the accident,
  - ▷ the investigating officer's report says the other driver caused the accident,
  - ▷ witness statements indicate the other driver caused the accident, or
  - ▷ the other driver is convicted of a violation which caused the accident.
- Entered into a written payment agreement with the others in the accident (there are several ways to do this including with a special Agreement Release form or a Confession of Judgment that is filed in court),
- Received a document showing that the other driver or the driver's insurance company accepted liability and paid the damages, OR
- Filed a bankruptcy petition that included all the possible claims from the accident.

### What if the suspension already happened?

If your license and/or registration has already been suspended, the suspension will stay until one of the following happens:

- You pay an amount set by the DOT.
- Twelve months have passed since the accident and the DOT has not been told about any lawsuits for damages regarding the accident.
- Evidence has been filed with the DOT showing:
  - ▷ Release from liability,
  - ▷ Final court decision that you aren't liable,
  - ▷ Confession of judgment, OR
  - ▷ Written payment agreement with the other party.

### If I don't have a way to stop or end the suspension, how do I get my license and/or registration back?

If judgment is entered against you, you can try to get your license and/or registration back by:

- Getting a written consent from the person who has the judgment;
- Paying the judgment amount and getting a receipt from the clerk of court showing all payments have been made on the judgment;
- Filing a bankruptcy petition that includes the judgment;
- Entering into a court-authorized repayment plan;
- Proving you had liability insurance coverage at the time of the accident.

### Where can I go for help with my case?

If you get notices or court papers and need legal advice, you may be able to get help from Iowa Legal Aid or talk to a private attorney.

- Iowa Legal Aid provides help to low-income Iowans. Income and asset limits apply.
- To apply for help from Iowa Legal Aid, call 1-800-532-1275.
- If Iowa Legal Aid cannot help, you can look for an attorney through the Iowa State Bar Association's *Find-a-Lawyer* website – [www.iowafindalawyer.com](http://www.iowafindalawyer.com). Attorneys taking part in *Find-a-Lawyer* charge a \$25.00 fee for the first 30-minute consultation. If you need more help beyond the 30-minute consultation, you will need to negotiate a fee arrangement with the attorney.

*\*Josh Gaul is a staff attorney at Iowa Legal Aid's Central Iowa Regional Office.*



# “How Do I Get My Landlord to Make Repairs?”

By **Todd Schmidt\***

Most people know if you are a tenant and don't pay the rent, your landlord can evict you. But what can a tenant do if the landlord doesn't make needed repairs? Some people think a tenant can legally withhold the rent whenever a landlord fails to make repairs. Not paying rent can create problems for a tenant in addition to needing repairs to the house or apartment.

## What can happen if rent is withheld?

You *might be* evicted if you don't pay the rent *even if* your landlord failed to make repairs. Withholding rent is always risky. You don't know whether a judge will agree that the problem was so bad that you had the right to withhold the rent. At the same time, it is illegal for a landlord to refuse to make repairs or shut off utilities because a tenant is behind on the rent.

## So what do you do if your landlord won't make repairs?

Under Iowa law tenants can do a number of things when repairs are needed to keep the property safe and livable. Some of those remedies may not be an option for tenants who don't have the money to do the repair or are not able to find other housing. Steps a tenant may take when a landlord fails to make repairs include:

- You can make the repairs yourself and deduct them from your rent;
- You can end the lease and move out; or
- You can call the housing inspector.

## I want to make the repairs myself.

This may be an option when:

1. The problem impacts the livability of the property as defined by Iowa law (Iowa Code Section 562A.15). Problems could include building code violations that are material to health and safety. It could include a mold problem, a bug problem, or problems with the plumbing system, the electrical system, heating and/or the air-conditioning system, a broken appliance, garbage pickup, window repair, or entrance door repair. This would not include things like painting or decorating.
2. The problem is not the fault of the tenant, a member of the tenant's family, or a guest of the tenant.
3. The cost of correcting the problem is not more than one month's rent.

In order to make the repairs yourself, you need to go through the following steps:

1. **Give your landlord written notice.** The tenant first needs to give the landlord a notice. The notice must be in writing. Make sure the paper is dated and keep a copy to prove the landlord was notified about the repair. This notice needs to spell out the repairs needed. You should send the notice by regular and certified mail, unless you hand deliver the notice to the landlord and the landlord signs an acknowledgement that s/he received the notice. Keep a copy of the post office receipt to show that you sent it. The notice must be delivered to the landlord at least seven days before the next rental payment is due. However, the law says it takes four days for a notice sent by

*Some people think a tenant can legally withhold the rent whenever a landlord fails to make repairs. Not paying rent can create problems for a tenant in addition to needing repairs to the house or apartment.*

mail to be delivered. This means if you send it by mail you will actually need to mail it at least *eleven* days before the rent is due. The notice tells the landlord that the tenant will deduct the cost of the repair from the next month's rent.

2. **Make the Repairs.** It may be best to have someone else do the work, even if you could do it yourself. If you do the work yourself, you must be sure to keep careful records of the time put in and the materials bought. Keep all receipts for anything you buy. Remember that if the repairs are made and you deduct them from the rent, the landlord still might file an eviction against you for nonpayment of rent. A judge who determines the repairs were unnecessary or the cost of the repairs was unreasonable could still decide to evict you.
3. **Deduct the cost from your next month's rent.** You will want to give the landlord a copy of your receipts but keep the originals for yourself. The cost must be less than one month's rent. The repair should be completed as soon as you can. The repair must be completed before you get a nonpayment notice from the landlord.
4. **Special Rule For Landlord's Failure to Provide Essential Services.** If the problem has to do with an essential service like heat, hot water or water, you may immediately obtain repairs and deduct the cost from the next month's rent payment. You still need to send the landlord a written notice describing the problem and what you are going to do to correct it. But you do not need to send the notice 7 days before the rent is due.

## I want to end the lease.

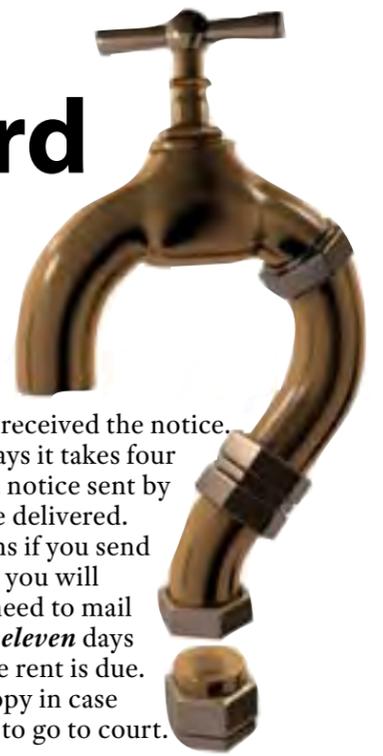
Again, you can only end your lease if the problem affects the livability of the property and if you are not at fault in causing the problem.

In order to end your lease, you need to go through the following steps:

1. **Give your landlord written notice.** The notice must say what repairs are needed. In the notice, the tenant says unless the needed repairs are made within seven days, the tenant will end the lease and move. For example, the notice could say:

*“My roof is leaking. If you do not repair this problem in 7 days, the lease will end on October 1, 2012.”*

Again, be sure to send this notice by regular and certified mail, unless the landlord will sign an acknowledgement



that s/he received the notice. The law says it takes four days for a notice sent by mail to be delivered. This means if you send it by mail you will actually need to mail it at least *eleven* days before the rent is due. Keep a copy in case you need to go to court.

2. **Move out if the landlord doesn't make the repairs.** If the landlord does not make the needed repairs within the seven days, the tenant must move out by the date specified in the notice. Remember if you are not out by the date specified on the notice, the landlord could start eviction procedures against you. If you choose this method, it is important to have somewhere to go if the landlord does not make the necessary repairs. If the landlord does make the repairs within the 7 days, the lease continues and you cannot move.

## What if I can't move or make the repairs myself?

Some repairs are too big for a tenant to handle. For example, if the home has no heat in the winter because the heating system needs to be replaced, most tenants cannot afford to pay for such a repair. Some repair persons may not want to get involved with big repairs without the permission of the owner. The cost to fix some major problems would be more than one month's rent. What can you do?

One possibility is calling the rental housing inspector for your city. Many cities have a rental housing code and inspectors to enforce it. If there is a serious violation, the city inspector may order the landlord to fix it quickly. A landlord who does not fix it may be taken to court or fined by the city. If the city inspector finds really bad housing problems, the inspector may say the rental unit is unfit to live in. In those cases, the tenants may have to move out right away.

If none of these will work for you, there may be other things you can try but you will probably need the help of a lawyer. It may be possible to force your landlord to make repairs by filing a law suit. If the judge decides the landlord has not lived up to the duty to provide essential services or to keep the apartment in a livable condition and the tenants are hurt by it, the judge may order the landlord to make the repairs.

Under all these methods of repair, the landlord may not retaliate or try to get back at the tenant by raising the rent, trying to evict the tenant, or reducing services. If the landlord tries anything like that within one year of when the tenant made a complaint about repairs, the law assumes the landlord is trying to get back at the tenant. Then the landlord would have to show some other reason for taking the action. However, if a tenant has not paid the rent, the law doesn't assume the landlord is retaliating if he or she tries to evict the tenant.

A tenant with problems involving an eviction or other landlord/tenant law question should see an attorney for advice. To find out if you may be able to get free legal help from Iowa Legal Aid, call 1-800-532-1275.

*\*Todd Schmidt is a staff attorney at Iowa Legal Aid's Northeast Iowa Regional Office in Dubuque.*

## The Pension Corner – LOST PENSION PLANS

By Bill Nassif\*

**Q**uestion: *I worked for ABC Company for about 15 years from 1975 to 1990. It had a pension plan and when I left they told me I was vested and could begin receiving benefits when I was 65. I am almost 65 and am having trouble finding the plan. I recently learned ABC Company was sold about 10 years ago and the company that bought them later went out of business. How can I find the plan and start getting my benefits?*

**A**nswer: You ask a good question and you are not alone. Many people lose track of pension plans when former employers move, merge, change names or go out of business. There are several ways to find these “Lost Pensions.” The first step is to gather all the information you can about your plan, such as the plan’s summary plan description or your individual benefit statements. The next step for a defined benefit plan (a kind of retirement plan that promises to pay a specific monthly benefit for life) is to contact the Pension Benefit Guarantee Corporation (the “PBGC”). The PBGC is a federal government agency that oversees the termination of most private-defined benefit pension plans. Most private-defined benefit pension plans that terminate must file reports with the PBGC. If the pension plan could not locate all the plan participants, then the PBGC may have records of those lost participants. The PBGC may also take over the plan. Thus, checking with the PBGC can be a very good way to find your pension. They may even be looking for you! You can contact the PBGC at (800) 400-7242 or on their website at [www.pbgc.gov](http://www.pbgc.gov).

If your plan was not terminated, it is possible it is being administered by a different company. Iowa Legal Aid may be able to help locate this plan.

For help in finding a “Lost Pension” or for other questions about pensions or retirement plans, contact Iowa Legal Aid’s Pension Rights Project at 800-992-8161.

\*Bill Nassif is a staff attorney with Iowa Legal Aid’s Pension Rights Project.

**ALERT --- The annual Fall Open Enrollment Period this year for the Medicare Part D Prescription Drug program is coming up soon! If you or a family member gets medicines through Medicaid Part D, be sure to read the information on the last page of this issue.**

## Iowa Legal Aid Helps With Pension Problems

Iowa Legal Aid provides FREE help with your pension issues! You can call our toll-free number at 1-800-992-8161. Des Moines area residents can also call 282-8161.

The *Pension Rights Project* provides help with employer, union and government pensions. This includes traditional defined benefit plans as well as plans like 401(k)’s. Our services include:

- Contacting pension administrators on your behalf;
- Finding “lost” pension funds when companies merge or go out of business;
- Helping you apply for your benefits;
- Helping with appeals if your pension is denied;
- Getting survivor benefits;
- Checking benefit calculations;
- Assisting with pension issues in divorces;
- Sending out information about pension issues.

The *Pension Rights Project* is partially funded by the U.S. Administration on Aging. Services are free to all Iowans without regard to age or finances.

## Mom is in a Nursing Home on Title 19/Medicaid – Can She Have a Private Room?



**M**any elderly Iowans enter nursing homes after living privately in their own homes or apartments. When entering a nursing home, some maintain a degree of privacy by getting their own room as long as they can pay the higher cost of a private room. After using up their savings, people must apply for Medicaid to pay for nursing home costs. Once on Medicaid, most of the time the resident must live in a shared room.

It can be very difficult and emotionally painful when an elderly person suddenly must share space with a stranger. This is especially true if the stranger does not have the same interests or habits. Imagine how disturbing and unpleasant it might be when a person who enjoys quiet reading now must live with someone constantly watching television at a loud volume.

A new Iowa law passed in 2011 may provide relief. Iowans in nursing homes on Medicaid may now have a private room if they or family members pay the extra cost. So if your mother, father or other loved one is on Medicaid and wants to have a private room, it is now an option as long as someone pays the extra cost. Important Note: If someone decides to help with the extra cost, their payments must go directly to the nursing home and not to the resident.

This is a welcome change for families willing and able to maintain some privacy and comfort for loved ones living in a nursing home. This information is from the Legal Hotline for Older Iowans. The Hotline is a project of Iowa Legal Aid and is funded in part by the U.S. Administration on Aging. The Hotline is a free, confidential service for all Iowans 60 or older with questions on non-criminal legal matters. To reach the Legal Hotline for Older Iowans, call 1-800-992-8161.

## Iowa Legal Aid helps low-income Iowans

Did you know... After calling what looked like a local number for “legal aid” in the phone book, some Iowans got return calls from somewhere in Georgia?



Don't be misled ...

- Iowa Legal Aid provides **FREE** legal assistance to those who qualify.
- Iowa Legal Aid helps low-income Iowans with civil legal problems including:
  - Domestic violence
  - Housing
  - Public Benefit Programs

The intake number for Iowa Legal Aid is 1-800-532-1275

Iowans age 60 and over, call Iowa Legal Aid's Legal Hotline for Older Iowans at

1-800-992-8161



Visit us online at

[iowalegalaid.org](http://iowalegalaid.org)



**FREE**  
Legal Help

**1-800-992-8161**  
(282-8161 in Des Moines)

**The Legal Hotline  
for Older Iowans  
(60 & Over)**

**An Iowa Legal Aid Project**

# Avoiding Fake Check Scams

By Mike Tulis\*

Scams involving fake (or counterfeit) bank checks, corporate checks and personal checks are common. There are also scams involving fake money orders. Consumers need to be careful when they deposit unfamiliar checks (or money orders) into their personal bank accounts. Fake check scams have many variations. Here are a few:

## The Secret Shopper

A person receives an offer over the Internet or in the mail to be employed as a “secret shopper” to evaluate a money transfer service or various local businesses. The consumer is sent a check, told to deposit it in his or her bank account and withdraw the amount of the check in cash. The consumer is then given a deadline to take all or part of the cash to a money transfer service and wire it to an unknown address. Sometimes the consumer is told to use some amount of the money to make purchases from certain businesses and submit a “secret shopper” report. In other variations, the consumer may be allowed to keep some of the money as pay for the work performed. The consumer later discovers that the check or money order is fake and is required to reimburse the bank for the full amount deposited.

## The Lottery or Sweepstakes Scam

A letter arrives stating that the person has won a foreign lottery or sweepstakes. The letter includes a check to pay the fees and taxes for the prize. The winner is instructed to deposit the check, then wire the money to pay the fees and taxes in order to claim the prize. The consumer later discovers that the check is fake and he or she owes the bank the amount deposited. To add insult to injury, the prize never arrives.

## The Overpayment Scam

This scam targets a person selling cars or other valuable items through local classified ads, craigslist ads, or online auction sites. The scam artist replies to the ad or auction posting and offers to pay for the item with a check in an amount larger than the purchase price. The scam artist usually has a good story as to why the check is for more than the purchase price. The seller is asked to wire back the excess money after depositing the check. The seller does this and later is responsible for the full amount of the deposit when the bank discovers the check is fake.

## If the Bank Lets Me Withdraw the Money the Check Is Good, Right? Why Must I Pay?

The fact the bank allows you to withdraw money doesn't mean the check is good. Under federal law banks must make funds available to you from U.S. Treasury checks, official bank checks (cashier's check, certified checks and teller's checks) and checks paid by government agencies at the opening of the business day after you deposit the check. For other checks, banks must similarly make the first \$100 available for withdrawal the day after you deposit the check. Any remaining funds must be made available on the second day after the deposit if payable by a local bank and within five days if drawn on distant banks. As part of providing good customer service, some banks will allow the full amount of a deposited check to be available for withdrawal before it has cleared.

Just because funds from a check you've deposited are available for withdrawal doesn't mean the check has cleared. It is best not to rely on money from any checks (cashier's, business or personal) given to you by strangers. The best policy is not to withdraw the money deposited until the bank advises you that the check has cleared. Fake checks can take weeks to be discovered and untangled. You are responsible for any checks you deposit into your bank account. Until the bank confirms that the check has cleared and the funds have been deposited into your account, you are liable to repay any funds withdrawn against that check.



## Other Tips for Avoiding Check Scams

- Ignore and throw away any offers that require you to pay for a prize or a gift. It's not free, not a prize and not a gift if you're required to pay money to get it.
- Resist the urge to enter foreign lotteries or sweepstakes. It is illegal to play foreign lotteries through the mail or by telephone. Most foreign lottery solicitations are illegal.
- If someone you don't know wants to pay you by check, but wants to write it for more than the purchase price and insists you wire some or all of the money back to them, be careful! It's a scam that could cost you money you don't have. There is no legitimate reason for someone who is paying you money to ask you to wire money back. To learn more, visit [www.ftc.gov/opa/2004/12/checkoverpayment.shtml](http://www.ftc.gov/opa/2004/12/checkoverpayment.shtml)
- If you're selling something, you can insist on cash or some alternate way to pay, such as an online payment service or escrow service.
  - ▷ Some escrow services charge fees for processing the payment.
  - ▷ If a buyer insists on using a particular online payment or escrow service you have never heard of, check it out.
  - ▷ To learn more about escrow services and online payment systems, visit [www.ftc.gov/onlineshopping](http://www.ftc.gov/onlineshopping)
- If you have to take a check, insist on a cashier's check for the exact amount from a local bank or a bank that has a branch in your area. You can then verify with the bank to make sure both the account and check are valid. Don't rely on the other person to supply you with the bank's telephone number, use an online directory or telephone book to locate it yourself.
- Resist the pressure to act now. If the person's offer of money is good now, it will still be good once the check clears. Don't withdraw any money from a deposited check until the bank verifies that the check is valid and it has cleared.

## Reporting Fake Check Scams

If you think you've been targeted by a fake check or money order scam, report it to the following agencies:

- **The Federal Trade Commission.** Visit [www.ftc.gov](http://www.ftc.gov) or call 877-FTC-HELP
- **The US Postal Inspection Service.** Visit [www.usps.gov/websites/depart/inspect](http://www.usps.gov/websites/depart/inspect) or call the telephone number listed in the Blue Pages of your telephone directory.
- **The Iowa Attorney General's office.** Visit [www.state.ia.us/government/ag/index.html](http://www.state.ia.us/government/ag/index.html) or call 515-281-5926, or toll-free at 888-777-4590.

\*Mike Tulis is a senior staff attorney at Iowa Legal Aid's Southwest Iowa Regional Office in Council Bluffs.

# New Law Makes It More Difficult to End a Guardianship over a Minor

By Donna K. Bothwell\*

A recent change in the law creates a new hurdle to end a guardianship for a minor child. The change in the law only applies to guardianships started because of a Child In Need of Assistance (CINA) action. During the course of a CINA action, the court sometimes enters an order placing a child in the guardianship of a non-parent. In 2010, the law was changed to allow the CINA (juvenile) court to enter the guardianship order in the CINA proceeding and then let the guardianship court decide what is best for the child.



Before the change in the law, a parent could file a petition to end a guardianship of his or her child. Then the guardian had to prove that the guardianship was still necessary, that the parents were not fit or suitable to care for their child and that it was not in the best interest of the child to be returned to the parent. The new law, however, changes the normal parental preference and also changes who has the burden of proof. The parent, not the guardian, now has to prove it is in the best interest of the child to live with the parent. The change in the law means the court cannot presume it is best for the child to live with his or her parent instead of the guardian. Shifting the burden of proof to the parent and removing the parental preference may make it very difficult for parents to end guardianships over their child.

It is important to know that this change only applies to guardianships started as a result of a CINA order. In other minor guardianships, the guardian still has to overcome the parental preference and prove it is best for the child to not be with the parent.

\*Donna Bothwell is a staff attorney at Iowa Legal Aid's Southwest Iowa Regional Office in Council Bluffs.

The information in this newsletter was correct as of the date it was printed. The laws may have changed. **DO NOT ASSUME THAT THE INFORMATION IS CORRECT AFTER THE DATE PRINTED ON THE FIRST PAGE.**

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this newsletter for your specific case. If you need a lawyer but can't afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid.

**AS YOU READ THIS NEWSLETTER, REMEMBER IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.**



## Information on Emancipation and Minor Guardianships to Prevent Runaways

By Brooke Chesney\*

Children are not allowed to make their own decisions. Instead, they rely on parents to help them make good decisions. However, sometimes a child's parents are unable to make good decisions for them. Sometimes a parent is unable to overcome obstacles in his or her life, such as substance abuse, domestic violence, or mental illness. Under these circumstances, children often need to look for another adult, such as a relative or a family friend, to make decisions for them. Also, an older child may want to go out on his or her own to get away from problems at home. To ensure children are safe or pursuing the best options, it is important to know what the law can do to help.

Three legal options may help children with problems at home:

1. Durable Power of Attorney for a Minor Child;
2. Guardianship for a Minor Child; and
3. Emancipation of a Minor Child.

### Durable Power of Attorney for a Minor Child

A Durable Power of Attorney for a Minor Child can be granted by a parent and gives another adult the ability to make decisions for the child if the parent is not available. Examples of when a Durable Power of Attorney would be useful could include an emergency, such as a parent being ill, or a parent being temporarily absent.

- The document gives another adult the ability to make decisions a parent would usually make for a child.
- It can help the adult get benefits for the child like:
  - ▷ receiving state food assistance;
  - ▷ getting a medical card for the child;
  - ▷ enrolling a child in school; and
  - ▷ authorizing the child to receive medical assistance.
- Some of the benefits of using a Power of Attorney form include:
  - ▷ It does not terminate a parent's rights for a child; and
  - ▷ It can be cancelled by a parent in writing at any time.

### Guardianship

A Guardianship is a legal action where a judge gives custody of a child to a responsible adult. This means the judge finds the parents are unable to care for their child.

- It is a very serious legal proceeding which parents should carefully consider before taking any action.
- It means a parent can no longer make decisions for the child—these decisions will now be made by the guardian.
- It also cannot be ended at any time by a parent--only a judge can terminate a guardianship.

*In most cases, running away is not the best solution to problems in the home. There may be other choices.*

- If the parents and the guardian cannot agree regarding when a guardianship should end, a hearing will have to be scheduled.
- A judge will make a decision based on what is best for the child.

While guardianships are sometimes helpful to bring stability and some permanency into a child's life, they may not always be the best option for a struggling parent.

### Legal Emancipation

For a child at least 16 years old and able to make his or her own adult decisions, a legal emancipation may be an option. An emancipated child can make decisions on where he or she will live. The child would also be held responsible for any contracts signed and any actions taken. An emancipated minor would also be responsible for supporting himself or herself.

To qualify, the child must be at least 16 years of age and one of the following:

1. The parents agree to let the child live on his or her own;
2. The parents agree to let the child live out of the family home for at least 3 months, living on his or her own; or
3. The child can give reasons why the home of the parents or guardians is not a healthy or safe environment.

For a court to grant an emancipation order, the child must also show he or she is self-sufficient. This includes:

- Proof of employment (state, federal, or local government assistance does not count as employment);
- Showing the child can handle his/her own personal matters; and
- Showing the child is able and committed to going to school, a training program or employment.

In most cases, running away is not the best solution to problems in the home. There may be other choices. If you are a minor who is thinking about running away, stop and look at other ways to deal with the problem. For help seeing all options available, you may contact the National Runaway Switchboard at 1-800-786-2929. The line is open 24/7 and is meant to help the child or parents who call for more information. You may also visit their website at 1800runaway.org.

\*Brooke Chesney is a staff attorney with Iowa Legal Aid's Intake Unit.

# IPONDA:

## Iowa Protective Order Notification for Domestic Abuse Program

### What is IPONDA?

IPONDA is a free, confidential and anonymous information and notification system that tracks the service and expiration of a protective order. IPONDA was created to provide information, notification, and peace of mind for petitioners who wish to know when their protective order is served or about to expire.

### What Does IPONDA Do?

IPONDA uses computer and telephone technology to automatically notify protected parties when their protective order has been served on the respondent and 30 days prior to protective order or no contact order expiration.

### How Does IPONDA Work?

IPONDA partners with the Division of Criminal and Juvenile Justice Planning (CJJP) to provide protective order service and expiration information in real-time to petitioners on protective orders and no contact orders.

You can register to receive telephone and/or email notifications from IPONDA on your protective order or no contact order. For information or to register, call the IPONDA toll-free line at 1-888-7-IAVINE (1-888-742-8463), or go to [www.registervpo.com](http://www.registervpo.com). Once a protective order is served or about to expire, IPONDA will automatically call or email you at the number or address provided.

DO NOT depend solely on IPONDA for protection from the respondent. If you feel you may be at risk, contact your local law enforcement agency or your local victim service program for immediate support or to develop a safety plan.

**This information is from the website of the Attorney General of the State of Iowa where you may find out more about IPONDA: [http://www.iowa.gov/government/ag/helping\\_victims/contents/IPONDA.html](http://www.iowa.gov/government/ag/helping_victims/contents/IPONDA.html)**



### Will I lose my home?

**If you cannot make your house payments, you may be able to get free legal help from Iowa Legal Aid. Call toll-free: 1-800-532-1275. Or visit our website at [iowalegalaid.org](http://iowalegalaid.org)**

**For help with your financial problems, call the Iowa Mortgage Help Hotline: 877-622-4866 or visit the website: [www.iowamortgagehelp.com](http://www.iowamortgagehelp.com). They may be able to help you find out if a loan modification or other solution is available.**

# What Happens When People Who Get SSI Benefits Have Earned Income?

By Joe Basque\*

## Can I work while receiving Supplemental Security Income (SSI) from Social Security?

Not everyone who gets disability benefits from Social Security is disabled forever. Social Security has work incentive programs for people who want to try to work again while still keeping their benefit payments and medical coverage. The programs are helpful, but they can also cause problems if the rules are not followed carefully. Supplemental Security Income (SSI) benefits have different work incentives than Social Security Disability (SSD). The regulations for working while receiving SSI are extremely income sensitive. This article will only discuss the work incentive programs for SSI. It is important to know which rules apply based upon the type of benefits you receive.

## What does income sensitive mean?

Income sensitive means the amount of money you receive from SSI depends upon your income. Generally, this means the more income you have, the less your SSI benefit will be. However, Social Security only considers certain types of income countable; if you have income that is not considered countable by Social Security, it will not limit your ability to obtain benefits.

## What income does not count for SSI?

The first \$20 you receive in a month does not count against your SSI benefit amount, regardless of whether it is earned income such as money you receive from working, or unearned income such as the Family Investment Program (FIP), unemployment, or money you win at the casino. Additionally, Social Security also does not count food stamps, income tax refunds, home energy assistance, grants/scholarships for tuition and educational expenses, and \$65 of wages each month. You may be able to deduct your work-related expenses to reduce the amount of your earnings. It is important to discuss the deductions with Social Security before assuming you qualify for them.

After the deductions, Social Security reduces the SSI benefit amount by fifty cents for each dollar of earned income. Social Security reduces the SSI benefit amount by one dollar for every dollar of unearned income.

## I have extra, work-related expenses because of my disability. Can I deduct those?

Yes. You are able to deduct work-related expenses you pay if they are related to your disability. For example, you couldn't claim bus fare but if you need to take para-transit and it costs more, you can claim the difference. As mentioned above, be sure to discuss the deductions with Social Security before assuming you qualify for them.

If you get SSI benefits and your disability on record with the Social Security Administration is blindness and you are working, the cost of certain of your expenses can be subtracted from your gross monthly earnings. These are called Blind Work Expenses (BWEs). The cost of these expenses will be used in calculating your Supplemental Security Income (SSI) cash benefit amount.

## Do I have to tell Social Security if I decide to try to work?

It is your responsibility to immediately report any changes in work activity that could affect your benefits. This means you must inform Social Security right away if:

- you start or stop work,
- you already reported your work but your duties, hours, or pay have changed; or
- you start paying for expenses that you need in order to work because of your disability.

*Social Security work incentive programs are helpful, but they can also cause problems if the rules are not followed carefully.*

It is important that you report all changes in your work activity to Social Security promptly to avoid an overpayment.

## How much can I earn before my benefits stop?

The amount you can earn before your benefits stop varies for each individual, as it is based on the amount of benefits you receive and your countable income. For more information on how much you can earn, call Social Security at 1-800-772-1213, or contact your local Social Security office.

## What if my benefits stop because of my earnings?

Your SSI benefit amount can rise and fall depending on your earnings. Your SSI benefits may stop in months in which your earnings are too high, but then resume if your earnings drop. It is important to report your earnings to Social Security to avoid overpayments.

Your medical benefits will continue as long as you are still considered disabled by the Social Security Administration and you meet the income and asset eligibility rules for Medicaid, which are different from SSI.

If SSI benefits are terminated because Social Security finds that you can work, and you become unable to work again within 5 years, you can ask Social Security to start your benefits again. You do not have to file a new application and Social Security should start your benefits right away while they decide if you are still disabled. You always have the right to file a new application for benefits, too. Social Security can help you choose the best option for your situation.

## Are there any exceptions for students?

Students with disabilities have some special rules to help them return to work. In 2012, SSI will not count a student's monthly earnings up to \$1,700 (up to a yearly maximum of \$6,840) if you are under the age of 22 and are going to school or attending a training program regularly.

## Are there any programs to help me go to work?

SSI has the "Plan to Achieve Self Support," or PASS. This program helps you design a plan to help you go to work. Money you use for this plan will not count as income or as a resource that affects your SSI eligibility. If you are income or resource ineligible for SSI, applying those to your Plan to Achieve Self Support may make you eligible for SSI. If you are already on SSI, putting income (other than your SSI) towards your Plan to Achieve Self Support can increase your SSI benefit amount. Also, the "Ticket to Work" program is for anyone receiving SSI payments. It is a program designed by Social Security to provide vocational, rehabilitation, training, job referral, and other employment support services for free. On top of other program work incentives, if you are in the ticket to work program and making progress, Social Security will not review your case to see if you are still disabled.

On the Cornell University website [www.passonline.org](http://www.passonline.org), recipients can build their own PASS at their own pace by answering simple



questions and looking at sample responses. When done, hit "print" to get a completed PASS form.

## Having Earned Income and Getting SSI

No matter how much money you earn and how much your SSI is reduced, you will always have more cash at the end of the month. You can find out more about Social Security work incentives on their website, [www.socialsecurity.gov](http://www.socialsecurity.gov), or by calling Social Security at 1-800-772-1213. Your local Social Security office can help you with any questions you have as well.

If you have problems with work incentive programs or benefit overpayments, Iowa Legal Aid may be able to help. Call 1-800-532-1275. Hours for telephone intakes are from 9 to 11 a.m. and 1:30 to 3:30 p.m. Monday through Friday, except Thursday afternoon.

\*Joe Basque is a senior staff attorney at Iowa Legal Aid's Southwest Iowa Regional Office in Council Bluffs.



## FREE LEGAL TAX HELP

- Claim The Earned Income Credit
- Get Assistance With Tax Controversies

Call Iowa Legal Aid for details on the **Low-Income Taxpayer Clinic**.

**1-800-532-1275**

The Equal Justice Journal is published four times a year by Iowa Legal Aid. The Equal Justice Journal is free to low-income people in all counties of Iowa. All others must pay a \$10.00 annual subscription fee. The EJJ is available in a larger print edition upon request.

All correspondence should be sent to:

The Equal Justice Journal  
Iowa Legal Aid  
1111 9th Street, Suite 230  
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# Accidents with No Car Insurance

By Josh Gaul\*

**I was in a car accident that wasn't my fault, but I didn't have car insurance. What can happen to me?**

The Department of Transportation (DOT) must suspend your driver's license and the vehicle registration if you do not have car insurance and are involved in an accident that results in:

- bodily injury,
- death, OR
- damage of \$1,500 or more to the property.

All the registrations of the owner of the motor vehicle are suspended, even if the owner was not driving during the accident.

**Are there any exceptions?**

The DOT should not suspend your license or registration if:

- You post money or a surety bond as security in an amount the DOT says is enough to satisfy any judgment for damages, with a maximum of \$55,000;
- The only damage or injury was done to the uninsured person;
- The vehicle was legally stopped, standing or parked; OR
- Your vehicle was driven without your consent.

You can also avoid having your license or registration suspended if you file satisfactory evidence with the DOT before the date of suspension that you:

- Received a release from liability from the other driver,
- Have a court order that says you are not liable for the damage,

*Continued on Page Two...*



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## Medicare Part D (Drug) Program Open Enrollment Period Starts October 15th

**ALERT --- The annual Fall Open Enrollment Period this year for the Medicare Part D Prescription Drug program is coming up soon!**

The Open Enrollment Period for your Medicare Part D prescription drug coverage begins on October 15th and ends on December 7th. Changes will be effective on January 1, 2013. So don't wait! Unless you are on the "Extra Help" subsidy program, you must make changes during this period or you will likely have to keep your current coverage until 2014. If you are getting the Extra Help subsidy, then you can change your Part D Drug Plan as often as monthly.

Even if you like your current Part D coverage, it is a good idea to check to make sure you will have the best coverage in 2013 for the drugs you take. For help evaluating your Plan, contact a Senior Health Insurance Information Program (SHIIP) counselor in your area. To find a local SHIIP counselor, call 800-351-4664 or go to the SHIIP website at <http://www.shiip.state.ia.us/>

Iowa Legal Aid is a not-for-profit organization providing free legal help to low-income Iowans. Financial support comes from a wide range of sources including federal, state and local governments as well as individual donors and private organizations. Iowa Legal Aid's services are supported by contributions from many United Way Agencies in Iowa.



## LOW-INCOME READERS OF THE EQUAL JUSTICE JOURNAL...



If you have a question about something you read in this newsletter, call **THE EJJ HOTLINE** at 1-800-992-8161. When your call is answered, tell the receptionist you want **The EJJ Hotline**. Your call will be transferred to a staff member who will be able to respond to inquiries from persons who are eligible for free legal help from Iowa Legal Aid.